IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 918

GREAT LAKES AIRLINES, INC., CENTRAL AIR TRANSPORT, INC., CURREY AIR TRANSPORT LIMITED, TRANS ALASKAN AIRLINES, INC., *Petitioners*,

v.

CIVIL AERONAUTICS BOARD, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

PETITIONERS' REPLY TO BRIEF FOR RESPONDENT

At the outset we call the attention of the Court to the fact that the Solicitor General has informed us that he will not oppose petitioners' motion to delay consideration of this petition until two petitions from the Ninth Circuit, involving closely connected cases, have

been disposed of. This motion is based primarily on equitable grounds which the Solicitor General is not contesting.

Respondent in opposition states that this case applies only to a special situation and is, therefore, inappropriate for certiorari. We believe that a reading of the dissenting opinion of Judge Fahy in the court below will demonstrate that the case involves the application of Section 9(b) of the Administrative Procedure Act to *all* Government licenses of indefinite duration.

In its brief, respondent makes certain statements of fact which are either incomplete or inaccurate, and should be corrected.

Respondent would convey the impression that the Board's exemption, under which petitioners acquired their licenses was designed for operators of "small aircraft" engaged in nonscheduled services. (Brief, p. 4 What respondent does not point out is that there were many more hours of nonscheduled flying than there were hours of airline flying. It was a large and important segment of the aviation business which acquired licenses by virtue of the exemption provision. And it is these licenses acquired many years ago which the Board is canceling without complying with Section 9(b).

In each revision of its regulations (described on pp. 4-8 of its Brief) the Board was always careful to provide due process to the licensees. The 1947 regulation made letters of registration subject to revocation "for cause" and after notice of hearing. (R. 301-A The 1949 regulation required the filing of applications for individual authorizations. The Board's brief

(p. 6), says the Board granted some and denied others. The brief does not say, as it should, that such denial was only tentative, and the carrier, upon request, was granted a due process hearing as a matter of course. (R. 301-A; *Modern Air Transport, Exemption*, 14 C.A.B. 459 (1951)) This type of procedure, in which an order was issued giving reasons for denial of the application, and an opportunity for full hearing after the issuance of the order, would probably have complied with Section 9(b).

The Board, however, in the instant case did not follow its former procedure. Instead, it issued an order directing the licensees to apply for a different kind of operating authority and held hearings on these applications without giving any notice of violations or opportunity to achieve compliance. This order was adopted without adjudicatory proceedings, and, if it is relied on to limit the licenses the order must be held to be invalid. See *Great Lakes Airlines, Inc.* v. *Civil Aeronautics Board*, C.A. 9th Cir., May 4, 1961, 3 Avi. 17,366 at 17,374-5, and *American Air Transport* v. *Civil Aeronautics Board*, 98 F. Supp. 660 (D.D.C. 1951), affirmed 91 U.S. App. D.C. 318, 201 F. 2d 189, certificate dismissed, 344 U.S. 4 (1952).

On page 10, footnote 6, respondent's brief states that petitioners did not challenge evidentiary support for certain findings. On page 14 of respondent's brief it is said "Petitioners were given a full opportunity to meet all evidence of prior violations introduced before the Examiner". The first statement quoted above is misleading. Petitioners did challenge all the findings on legal grounds. They could not challenge them on evidentiary grounds, because the Board refused to

reopen the hearing and receive the evidence in their favor. It would have been impossible to have produced that evidence at the original hearings because petitioners did not even know what the charges were.

The above quoted statement from page 14 of the brief is untrue since the Board denied any opportunity to the petitioners to present evidence after the charges were known.

For the same reasons the brief (p. 14) is misleading when it says that the Board followed Section 7(c) of the Administrative Procedure Act. Section 7(c) was violated when the Board refused to hear plaintiffs' evidence in defense of the charges after they were made.

Respectfully submitted.

ARNOLD, FORTAS & PORTER
1229 19th Street, N. W.
Washington 6, D. C.

KEATINGE & OLDER
3325 Wilshire Boulevard
Los Angeles 5, California

MORRIS, PEARCE, GARDNER & PRATT
905 American Security Building
Washington 5, D. C.

Of Counsel

THURMAN ARNOLD
1229 19th Street, N. W.
Washington 6, D. C.

CHARLES H. OLDER
3325 Wilshire Boulevard
Los Angeles 5, California

ALBERT F. BEITEL
905 American Security Building
Washington 5, D. C.

Attorneys for Petitioners

Dated: June 14, 1961.